(1) (7)

₹ 2480/-

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Single Bench

S.A.NO. 492 OF 2003

APPELLANT
PLAINTIFF : Haridas Jaisawal, S/o. Jagannath Jaisawal aged about 43 years, R/o. Bus Stand, Raigarh, Present address Kotra Road , Raigarh District Raigarh (C.G.).

VERSUS

RESPONDENTS
DEFENDANTS

1. Chhattisgarh Government Through Collector, Raigarh (C.G.)
2. Nagar Palika Parishad, Raigarh Through Chief Municipal Officer,

P. R. No. 3857/03
Presented by Shri S. Sundaram
dated 22.09.03

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE

...6.2003 in C.A No.39A/2001

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(28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. 492/03 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

18 -01-2005

Smt. Hameeda Siddique Counsel for the appellant.

Heard on the question of admission.

This Second Appeal has been filed by the plaintiff / appellant under Section 100 of the C.P.C. against the impugned Judgment and decree dated 06-02-2003 passed by First Additional District Judge, Raigarh in Civil Appeal No. 39-A/2001 whereby the appeal of the appellant has been dismissed and the judgment and decree dated 08-05-2001 passed by Civil Judge Class – I, Raigarh in Civil Suit No. 31-A/92, has been confirmed.

Case of the plaintiff before the learned Civil Judge was that the suit land described in Schedule –'A' was encroached by the plaintiff in the year 1970-71 which was subsequently given on temporary lease on annual rent of Rs. 141.25/- and the plaintiff paid this rent up to 1989 and he was continuously in possession thereof for 18 years by erecting the Hotel. Temporary lease was given in the year 1976-77. However, the application for permanent lease has not been decided and same is still pending. When the revenue officers threatened the plaintiff to dispossess, the suit was filed. However, the defendant respondent No. 2 dispossessed the plaintiff from the suit premises on 19-12-1985 and started construction of shops over the suit land. Respondent No. 2 however made a mention that in case the shops are constructed over the suit land, the appellant /

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

plaintiff would be entitled for preferential allotment of the same. As the defendant No. 1 has recovered a total sum of Rs. 2172.75/- as rent illegally, the plaintiff is entitled to recover the same and accordingly the suit was filed for declaration that he was entitled for renewal of the temporary lease and also that the proceedings of ejactment are illegal. Relief for possession of the suit land was also claimed. In the alternative the plaintiff also prayed for preferential treatment in the matter of allotment and recovery of Rs. 2172.75/- being the rent illegally recovered by the defendant No. 1 from the plaintiff.

The defendants denied the plaint allegations. They also denied pendency of revenue cases. They also denied the fact that due to the shops being in corner, the public interest shall be adversely affected. Defendants further pleaded that the suit was barred by limitation and that the plaintiff has not paid proper Court fee and the suit land was given by defendant No. 1 to defendant No. 2 for the purpose of construction of the Bus Stand, Waiting room, Bus parking, and the Nazul rent was being paid by defendant No. 2 and therefore, the plaintiff was not entitled for permanent or temporary lease. Similarly it was also stated that plaintiff was not entitled for obtaining the possession of constructed shops on the basis of preferential treatment as the construction has been done for public interest. Legal objection was also raised that suit was barred under Sections 57 and 257 of the M.P. Land Revenue Code.

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मामला क्रमांक S.A. 492/03 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

On the basis of the pleadings of the respective parties the suit was dismissed and the trial Court held that the plaintiff was not entitled for possession as prayed by him. The trial Court also held that the plaintiff is neither entitled for possession of the suit property nor for the shops tobe constructed over the suit land on the basis of preferential treatment. Relief for recovery of Rs. 2172.75/- was also refused on the ground that the plaintiff had failed to prove in this regard by leading cogent evidence. The suit was also held to be time barred on the ground that the plaintiff himself admitted that he was disposed from the suit land in the year 1989 as per section 57(3) of the M.P. Land Revenue Code (hereinafter referred to as Code for convenience) any dispute about lease between the State and the private party, the suit could be filed within one year from the date when the cause of action arose but in this case the present suit was filed in the year 1992 which was beyond the period prescribed under Section 57 of the Code.

The appeal of the appellant was also dismissed by the first appellate Court. However, the appellate Court held that the suit was within limitation and it was properly stamped. Learned first appellate Court also held that the lease was for a period of one year and there was no extension of the same thereafter. It was further held by the appellate Court that the payment of lease rent made by the plaintiff will not make him entitled for the permanent lease. Since the land was allotted to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

defendant No. 2 who has constructed the Bus stand and the shops, contention of the plaintiff that the defendant No.2 has no right over the suit property, is not acceptable. The plaintiff would have purchased the constructed shops by the participating in the auction proceeding and therefore the question of giving preference to the plaintiff does not arise. The shops have been constructed over the suit land and therefore, the plaintiff ought to have valued the suit on the basis of present valuation which he has not done. As the plaintiff is seeking possession of the suit property, finding of the trial Court that the valuation put by the plaintiff was not proper and it had no jurisdiction to try the suit on the ground of valuation of the suit, can also not be faulted and the suit dismissed on this ground is improper. However, the appeal has been dismissed on the ground that the temporary lease was for a period of one year which was never extended subsequently and the deposit of rent by the plaintiff will not confer any right on the plaintiff and as the suit land has been allotted to defendant / respondent No. 2 vide document Exhibit D-1 in pursuance of which the possession of the suit property has been obtained by defendant No. 2, can not be held to be illegal. As per documents of Exhibit P-19 and P-20 which are the memos issued by the Collector on the basis of which the plaintiff /appellant had prayed for allotment of shops on the basis of the preferential treatment, but however the same was held to be baseless by the appellate Court.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Learned appellate Court further held that since it was a mere direction of the Collector, it has no legal sanctity as it does not confer any right on the plaintiff of any preferential treatment in the matters of allotment. There is no allegations in the plaint nor in the evidence led to this effect that the plaintiff was forcibly ejected by defendant No. 2 and the plaintiff was at liberty to participate in auction proceedings evenafter completion of the construction of the shop which is admitted by the plaintiff in the cross examination and under these circumstances the contention of the plaintiff that he is entitled for preferential treatment was negatived by the appellate Court and accordingly the appeal was dismissed confirming the judgment and decree passed by the trial Court.

Learned counsel for the plaintiff / appellant frankly admitted that in the absence of any permanent lease in favour of the plaintiff, he had no right to claim possession based on title. However, it was argued that looking to the long possession of the plaintiff over the suit premises and also the fact that he was paying annual rent to the defendants, they had legitimate expectation that they shall be adjusted after construction of the shop by the defendants which has not been done and therefore the claim of the plaintiff that he had a preferential right to obtain the constructed shops from the defendants, has been illegally negatived by the trial Court and as such defendants were estopped from resiling from their stand in

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मामला क्रमांक S.A. 492/03 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

which they had promised that after construction, the plaintiff shall be adjusted.

I do not see any force in the submission of the plaintiff that he had any right for preferential treatment for obtaining the shops because the shops were to be sold by open auction and the plaintiff / appellant was free to participate in the said auction and the points raised by the appellant in the appeal memo are purely questions of fact and there is concurrent finding of both the Courts below that the plaintiff was not dispossessed from the suit premises forcefully and as the plaintiff had no valid right to obtain possession of the suit property on the basis of same lease, they do not call for any interference and as such no substantial question of law is involved in this appeal for determination.

Accordingly the appeal has no substance and the same is liable to be dismissed and it is dismissed as such.

Sd/-
DHIRENDRA MISHRA
Judge